

August 20, 2014

E8k9chr5	Summation - Mr. Bauer	Page 2204	E8k9chr5	Summation - Mr. Bauer	Page 2206
1	inconsistency, again, shows you how credible the witnesses are.		1	charged not only with committing the robbery and murder but	
2	If they were together in the GEO jail, as the questions were		2	also aiding and abetting those crimes as well. I expect that	
3	asked, and getting their stories straight, wouldn't they talk		3	Judge Ramos' instruction will make clear to you that if you aid	
4	about what brand? But they didn't. And it shows you that		4	or abet the shooter, you are just as guilty as if you pulled	
5	they're just telling you like it is, how they remembered it		5	the trigger.	
6	three-and-a-half years later.		6	What does aiding and abetting mean? I expect Judge	
7	Now, before I move on or off of Tyrell Whitaker, since		7	Ramos to give you examples. But what does it include? Being	
8	he's not charged with the drugs and the other guns, let me just		8	part of the robbery crew. Having your own gun at the robbery.	
9	talk for a moment and say that you heard that he was part of		9	Pulling it out during the robbery. You don't have to be the	
10	this crew selling drugs. You heard that he sold crack. You		10	shooter, ladies and gentlemen.	
11	heard that he sold heroin. You saw the heroin in the brown		11	Let me be perfectly clear. Baynes and Quay Quay.	
12	rice, the Goya rice, that he was arrested with on August 12,		12	They were lookouts. Didn't have guns. They are guilty of the	
13	2010. You heard that he sold drugs from Baynes, Mallory,		13	robbery, of aiding and abetting the robbery and aiding and	
14	McDermott, Williams.		14	abetting the murder.	
15	Danielle Williams, in particular, told you about Bow		15	L-I, who wasn't even there but set it all up, guilty	
16	Wow's drug sales. She saw him at 38 Dubois Street serving a		16	of aiding and abetting the robbery and the murder.	
17	customer because Reckless told him to. And she told you about		17	So these guys in the house with their own guns, guilty	
18	how he sold drugs with other people like Bash in her house with		18	of either the murder or aiding and abetting the murder. There	
19	her son, Smoke.		19	is no difference.	
20	Ladies and gentlemen, beyond a reasonable doubt Tyrell		20	So all those points about how it was a 9-millimeter	
21	Whitaker was part of this crew, part of this robbery. Part of		21	bullet that killed Mr. Henry. So what? It's interesting. It	
22	the murder of Jeffrey Henry.		22	would be nice to know who shot that particular bullet. But it	
23	Two final points on the murder. First, as you know,		23	is legally irrelevant.	
24	the defendants are charged with murder. Now, some cases the		24	Bow Wow and Gucci were given revolvers by Mallory and	
25	government has to prove that the defendants intended to kill		25	Kev Gotti. They were not 9-millimeters. But you don't know	
E8k9chr5	Summation - Mr. Bauer	Page 2205	E8k9chr5	Summation - Mr. Bauer	Page 2207
1	the victim to prove murder. Not here. As Judge Ramos will		1	what caliber gun Bash had. Maybe it was a 9. Maybe he's the	
2	explain to you, what the government has to show is that the		2	one who shot Mr. Henry. Maybe the robbers traded guns before	
3	defendants intended on committing a robbery -- not a murder, a		3	the robbery.	
4	robbery -- and that during that robbery, during that felony		4	And even though Bow Wow and Gucci had the .38	
5	somebody was killed. That's all. It's an important point and		5	revolvers from Mallory and Gotti, maybe they swapped them with	
6	one that I think you need to keep in mind as you listen to all		6	Bash and Baby E. We don't know. Anthony Baynes didn't know.	
7	of the evidence here.		7	Jamar Mallory didn't know. But it's besides the point.	
8	Now what about the big question? Who shot and killed		8	As defense counsel speaks to you, and if they focus on	
9	Jeffrey Henry? Was it Bash, Bow Wow, Gucci, Akinto Boone?		9	this 9-millimeter defense, I suggest to you that it's a	
10	Ladies and gentlemen, I'm just going to dismiss that out of		10	distraction. It's interesting, but it's a distraction. You	
11	hand. Akinto Boone told you that the hallway curved. It would		11	need to focus on the evidence. And you need to focus on the	
12	take a magic curving bullet for Akinto Boone to shoot around		12	law. And if you do that you'll see that the defendants are	
13	that hallway. You saw that door. It didn't have any bullets		13	guilty of the charged murder.	
14	in it. And as you heard from every witness, the door was		14	Now before I move on to those other counts of the	
15	barely opened. Let's forget about that Akinto Boone, those		15	drugs and the guns I want to talk to you a little more about	
16	questions. That's ridiculous.		16	the cooperators. As you know, we called four witnesses,	
17	Now, it's a distraction. But the question is --		17	Baynes, Mallory, Danielle Williams, David Evans, who pled	
18	because if I were you, I would have been sitting here through		18	guilty to cooperation agreements. There were two other	
19	this trial wondering who was the shooter? Which robber shot		19	witnesses, Ramone McDermott and Akinto Boone who are hoping to	
20	Mr. Henry? And the fact is we don't know.		20	get a letter from the government -- they didn't have an	
21	You heard that Bow Wow, Gucci, and Bash were taking		21	agreement -- who are hoping for a letter.	
22	turns firing at Mr. Henry. But you heard no evidence as to		22	Ladies and gentlemen, it would be great if we could	
23	which of the robbers fired those fatal shots.		23	call fine, upstanding citizens here to the witness stand to	
24	But here's the bottomline. It doesn't matter. It		24	talk about the interworkings of a robbery crew or crack sales	
25	doesn't matter. As I said earlier, each of the defendants is		25	on Chambers Street. But you know that's not possible. Can't	